

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF CALIFORNIA

LARRY BRIAN PORTEOUS,

Plaintiff,

v.

R. AVILA, et al.,

Defendants.

Case No. 1:21-cv-00529-SAB (PC)

ORDER DIRECTING DEFENDANTS TO  
RE-SERVE AND FILE MOTION FOR  
SUMMARY JUDGMENT WITH PROPER  
RAND NOTICE

(ECF No. 41)

Plaintiff Larry Brian Porteous is proceeding pro se and in forma pauperis in this civil rights action filed pursuant to 42 U.S.C. § 1983.

On November 30, 2022, Defendants filed a motion for summary judgment. (ECF No. 41.)

In Woods v. Carey, 684 F.3d 934, 939 (9th Cir. 2012), the Ninth Circuit held that a pro se prisoner plaintiff must be provided with “fair notice” of the requirements for opposing a motion for summary judgment at the time the motion is brought. Review of the current motion shows that Defendants did not provide Plaintiff with the proper Rand notice. See Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998). In particular, Defendants failed to advise Plaintiff of the contents of any applicable Eastern District of California Local Rule requirements, i.e., Local Rule 260; Rand, 154 F.3d 961. Plaintiff is entitled to service of the notice concurrently with the motion, Woods v. Carey, 684 F.3d 934, 938-41 (9th Cir. 2012); Rand v. Rowland, 154 F.3d at 960-61, in order to properly file an opposition if so desired, Labatad v. Corrections Corp. of America, 714

1 F.3d 1155, 1159 (9th Cir. 2013) (per curiam).

2 Accordingly, it is HEREBY ORDERED that:

- 3 1. Within **ten (10) days** from the date of service of this order, Defendants shall serve  
4 Plaintiff (and the Court) with the motion for summary judgment along with the  
5 proper Rand notice; and
- 6 2. Defendants' failure to properly serve the motion for summary judgment along  
7 with the proper Rand notice will result in denial of the motion by an assigned  
8 District Judge.

9  
10 IT IS SO ORDERED.

11 Dated: **December 1, 2022**

  
UNITED STATES MAGISTRATE JUDGE